

## Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-04 H-01  
INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02  
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FM AMEMBASSY ISLAMABAD  
TO SECSTATE WASHDC IMMEDIATE 2054  
INFO AMEMBASSY ANKARA  
AMEMBASSY COLOMBO  
AMEMBASSY DACCA  
AMEMBASSY KABUL PRIORITY  
AMCONSUL KARACHI  
AMCONSUL LAHORE  
AMEMBASSY NEW DELHI PRIORITY  
AMEMBASSY PARIS  
AMEMBASSY TEHRAN  
CINCPAC

CONFIDENTIAL ISLAMABAD 5749

CINCPAC FOR POLAD

E.O. 11652: GDS  
TAGS: PGOV, PINT, PK  
SUBJ: MARTIAL LAW COURTS RULED UNCONSTITUTIONAL IN PUNJAB

REF: ISLAMABAD 5085

1. IN A MOVE WHICH PUTS FURTHER STRAINS ON THE MILITARY'S  
WILLINGNESS TO SUPPORT THE PM AND WEAKENS BHUTTO'S  
POSITION AS HE BEGINS NEGOTIATIONS WITH THE OPPOSITION,  
THE LAHORE HIGH COURT ON JUNE SECOND UNANIMOUSLY RULED  
THAT THE MARTIAL LAW COURTS SYSTEM WAS UNCONSTITUTIONAL.  
THE COURT ALSO DECIDED THAT, REGARDLESS OF A PROVISION  
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OF THE RECENTLY ENACTED SEVENTH CONSTITUTIONAL AMENDMENT,  
IT HAD FULL JUDICIAL AUTHORITY TO REVIEW ALL LEGAL  
QUESTIONS ARISING FROM ACTIONS TAKEN BY THE MILITARY IN  
AREAS WHERE IT IS ASSISTING CIVIL AUTHORITIES. HOWEVER,  
THE COURT DID AFFIRM THE FEDERAL GOVERNMENT'S RIGHT TO  
CALL OUT THE ARMED FORCES IN AID OF CIVIL POWER. THE  
PUNJAB GOVERNMENT ANNOUNCED THAT IT WOULD FILE AN APPEAL

BEFORE THE SUPREME COURT OF PAKISTAN ON JUNE 3 CHALLENGING  
THE HIGH COURT'S FINDING.

2. COMMENT: THE LAHORE HIGH COURT HAS A REPUTATION FOR

JUDICIAL INDEPENDENCE AND INTEGRITY AND OFTEN ACTS CONTRARY  
TO THE GOVERNMENT'S WISHES. THE NET RESULT OF ITS ACTION  
IS THAT ALL THE DE FACTO MANIFESTATIONS OF MARTIAL LAW,  
EXCEPT MILITARY COURTS, WILL REMAIN, BUT FULL JUDICIAL  
AUTHORITY WILL REVERT TO THE PROVINCIAL GOVERNMENT UNLESS  
THE SUPREME COURT OVERTURNS THE HIGH COURT DECISION. WHILE  
THIS HAS NO DIRECT AND IMMEDIATE EFFECT ON THE ARMY'S ABILITY  
TO CARRY OUT ITS SECURITY FUNCTION, THE HIGH COURT DECISION DOES  
HAVE POTENTIALLY SERIOUS POLITICAL REPERCUSSIONS. IT  
ENDORSED THE PNA STAND THAT MARTIAL LAW IS UNCONSTITUTIONAL,  
AND BOOSTED THE OPPOSITION'S MORALE. FOR BHUTTO, THE  
DECISION WAS BOTH AWKWARD AND UNTIMELY, AND FURTHER  
WEAKENED HIS POSITION, COMING ON THE EVE OF NEGOTIATIONS  
WITH THE PNA. IT EMBARRASSED THE ARMY, WHICH HAD  
CONTENDED THAT IN SUPPORTING BHUTTO IT WAS ALSO SUPPORTING  
THE CONSTITUTION. THE ARMY REPORTEDLY  
WAS UNHAPPY FROM THE BEGINNING WITH THE COMBINED  
CIVIL/MILITARY ASPECT OF MARTIAL LAW ADMINISTRATION.  
IF THE HIGH COURT RULING STANDS, ARMY ACTIONS COULD BE  
CHALLENGED BY ANY CITIZEN WHO IS WILLING TO TAKE IT TO  
COURT, PUTTING FURTHER STRAIN ON THE ARMY'S RELATIONS WITH  
CIVIL AUTHORITIES AND MAKING THE MILITARY EVEN MORE  
UNCOMFORTABLE WITH ITS ROLE.

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3. THE LAHORE HIGH COURT DECISION IS A PLUS FOR THE  
OPPOSITION, BUT OBSERVERS QUESTION WHETHER THE SUPREME  
COURT WILL UPHOLD ITS RULING AGAINST THE GOVERNMENT.  
THE SIND HIGH COURT RECENTLY HEARD A SIMILAR CASE AND  
UNANIMOUSLY DECIDED IN FAVOR OF THE GOVERNMENT, THEREBY  
LEAVING THE COMPLETE MARTIAL LAW STRUCTURE INTACT IN  
KARACHI AND HYDERABAD.

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## Message Attributes

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